IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEALS NO. 5 AND 7 OF 2003.

CRIMINAL APPEAL NO. 5 OF 2003.

Shri Baiju Karuvittil,
son of Rajapan,
r/o at present Neura,
C/o Alvares Saw, Pilar, Goa,
native of Karuvingadda,
Kuruvittil House, Pat-Mehachil,
Kerala. ... Appellant.

VERSUS

S T A T E. ... Respondent.

Mr. N. Sardessai, Advocate for the Appellant.

Mr. S.N. Sardessai, Public Prosecutor for the State/Respondent.

CRIMINAL APPEAL NO. 7 OF 2003.

Shri Satheesan Kunnumal,
son of Narayan, r/o
Sanquelim, (Virdi Kerim),
Goa, Native Koovapoil,
Peringne (P.O.) Payyaannur
(Via) Kerala State. ... Apppellant.

VERSUS

S T A T E. ... Respondent.

Shri Irshad Aga, Advocate under Legal Aid Scheme for the Appellant.

Ms. W. Coutinho, A.P.P. for the State/Respondent.

CORAM: P.V. HARDAS, J.

DATE: 1ST OCTOBER, 2003.

ORAL JUDGMENT:

The appellants/original accused nos.2 and 1, being aggrieved by their conviction for the offences punishable under Sections 489-C and 489-B of the Indian Penal Code and sentence of rigorous imprisonment for three years and rigorous imprisonment for seven years and to pay a fine of Rs.5000/-, in default to undergo S.I. for six months respectively, passed by the Sessions Judge, South Goa, Margao, by Judgment dated 18th September, 2002, in Sessions Case No.63/2000,have filed the present appeals assailing the present conviction and sentence.

2. Criminal Appeal No.5/2003 is filed by the original accused no.2, while Criminal Appeal No.7/2003 is filed by the original accused No.1. Since the appellants were co-accused in the same Sessions Case, the two appeals are being decided by this common judgment.

3. The facts in brief as are necessary for the decision of these appeals are set out hereunder.

P.W.8 Francis Corte received reliable information from his informant on 31.8.2000 at 8.15 p.m. that one person in red-light area of Baina is in

possession of counterfeit notes and was trying to circulate them as genuine. P.W.8 P.I. Corte accordingly proceeded to Baina with his staff. On reaching Baina, with the assistance of the informant, the said person was identified. P.W.8 secured presence of two panch witnesses namely P.W.1/Salim Shaikh. The said person who was earlier identified by the informant, was apprehended and the personal search was undertaken which revealed 14 notes of Rs.100/- each in the right side pant pocket. A purse was also found in the pant pocket containing Rs.130/- which comprised of one note of Rs.100/- and three notes of Rs.10/- each. The said amount of Rs.130/- comprised of currency notes which were genuine. A panchanama of the entire sequence of events was drawn and is at Exh.26. Thereafter on the same day P.W.8 Corte along with the panchas proceeded to the red-light area and one currency note of Rs.100/- was produced by one Sharda who manages a brothel and where the accused no.1 is alleged to have given one fake note of Rs.100/- to a prostitute named Sachia. A panchanama in respect of the seizure of the currency note from Sharda is at Exh.27. It appears that the accused No.1 made certain statement that he would point out accused no.2. Accordingly presence of P.W.2 Abdul Khan was secured and the police alongwith the panchas proceeded to Neura. Accused no.1 is alleged to have pointed House

No.46 on the first floor as the place where accused No.2 could be found. After some time accused No.2 returned to his room and on seeing him, he was identified by accused No.1. The Police party including the panchas and accused No.1 followed accused No.2 and apprehended him. A personal search of accused No.2 Baiju was taken which revealed three counterfeit currency notes of Rs.100/- in the pocket of his T-Shirt. The numbers of the said notes were mentioned in the panchanama. The search of his purse revealed genuine currency notes amounting to Rs.350/-. The panchanama at Exh.46 was drawn. It appears that during investigation some statement had been made by accused No.2 relating to the identity of original accused No.3. Evidence in respect of the arrest and the seizure of currency notes from the possession of Accused No.3 need not be adverted to as accused No.3 was acquitted by the learned Trial Court and the State has chosen not to file any appeal challenging his acquittal.

It appears that on 4.9.2000, i.e. nearly after four days of arrest of the accused No.2, the accused No.2 is alleged to have made a disclosure statement in the presence of P.W. Abdul Khan expressing his willingness to point out some counterfeit currency notes. Exh.39 is the memorandum. The police and the panchas proceeded to Neura as per

the direction given by accused No.2, who led them to house No.46 (the same house from where he was arrested earlier). Accused No.2 is alleged to have led the police and the panchas to a room on the ground floor and removed a key from a pole to the gallery. The key was kept on top of the pole. Accused No.2 is alleged to have opened the lock of the said room which contained newly made furniture. The accused removed 12 currency notes from underneath a piece of furniture. The 12 notes were of the denomination of Rs.100/- each. Exh.39 evidences the seizure of the said currency notes. On 18.9.2000 50 fake notes of Rs.100/- each were produced by one P.W.7 Devendra which came to be attached by P.W.8 Francis in the presence of P.W.6 Gurudas Kerkar under a panchanama at Exh.48. The currency notes so seized could not be examined by the General Manager, Bank Note Press and ultimately were examined by P.W.9 Umesh Gaonkar who states that the currency notes seized as fake were found by him to be counterfeit.

The evidence of this witness apart from being artificial, tasks human credulity for its acceptance. It is unbelievable that when the accused had returned money borrowed by the accused, P.W.7 Devendra would not count it. For some inexplicable reason he chose to flee Goa on learning about the arrest of the accused

knowing that the accused had given him fake currency notes. His entire conduct in remaining in Belgaum and thereafter at the residence of his sister either without obtaining leave or without prior permission from his employer, is a conduct which is extremely suspicious. It not only reflects upon the veracity of his statement regarding the refund of the amount, but also affects the veracity of his statement that he had advanced Rs.5000/- as loan to the accused No.2. Therefore, according to me, the seizure of 50 fake currency notes of Rs.100/- each from the possession of P.W.7 Devendra does not in any manner implicate the accused No.2.

4. On committal of the case to the Court of Sessions, the learned Sessions Judge, South Goa, Margao, vide Exh. 5 framed charge against the appellants for offences punishable under Sections 489-B and 489-C of the Indian Penal Code. Both the appellants denied their guilt and claimed to be tried. The prosecution in support of its case, examined nine witnesses. The learned Trial Court on appreciation of the evidence, found both the appellants guilty and convicted and sentenced them as aforestated.

5. The evidence in respect of the original accused no.1/appellant in Criminal Appeal No.7/2003

consists of the seizure of 14 currency notes of Rs.100/- each vide Exh.26 and one currency note of Rs.100/- from the possession of one Sharda. The witnesses material for examining this circumstance against accused No.1 are P.W.1 Salim Shaikh, P.W.4 P. Sachia and P.W.8 Francis.

6. P.W.1 Salim Shaikh states that he was called by the Police to act as a panch witness. He was told that one person had been caught with duplicate notes. He has identified accused No.1 as the person who was present along with the Police. He also states that the accused No.1 was arrested by the Police. According to him in the right hand pant pocket of accused No.1, 14 notes of Rs.100/- each were found. The accused had a purse in his pant pocket which contained Rs.130/-. There was one note of Rs.100/- and three notes of Rs.10/- each. According to him the Police seized the 14 notes. A panchanama at Exh.26 was drawn. He further states that thereafter accused No.1 had stated that he had given one note to the owner of a brothel at Baina and the name of the owner was disclosed as Sharda. Accused No.1 took the police and the panchas to the said brothel. One Sharda had produced a currency note of Rs.100/- which had been allegedly given by accused No.1 to a prostitute known as Sachia. The panchanama at Exh.27 was drawn evidencing the

seizure of the said currency notes. In cross-examination he has admitted that Exh.27 does not contain any recital regarding the statement of accused No.1 that he had handed over Rs.100/- currency note to the owner of the brothel. He has also denied the suggestion that 14 currency notes were not seized from the person of the accused and he has denied the suggestion that one fake currency note was not produced by Sharda.

7. P.W.4 Sachia states that she does the business of prostitution for the last about three years at Baina. She has identified accused No.1 as the person who had come and had given her Rs.100/- i.e. one currency note of Rs.100/-. She in turn had handed over the said currency note to one Sharda who was the owner of the brothel. After the accused had left, the police had come and Sharda had produced a currency note of Rs.100/- which was seized by the Police. In the cross-examination she has denied the suggestion that the accused No.1 had not paid her Rs.100/- for having sex with her. The prosecution had not examined Sharda, though her statement was recorded. P.W.4 Sachia has not identified the currency note, which has been seized by the Police as the same currency notes which had been given by accused No.1 to her. In the absence of identification of that currency note, according to me,

the prosecution has not established that a fake currency note had been handed over by the accused no.1 to the owner of the brothel and the same came to be seized by the Police on being produced by the owner of the brothel.

8. P.W.8 Francis Corte has stated that the accused No.1 was identified by his informer and after securing the presence of two panch witnesses, personal search of the accused was conducted which yielded 14 counterfeit notes of Rs.100/- each. There is nothing in the cross-examination of P.W.8 to discredit his version regarding the seizure of 14 currency notes from the possession of accused No.1.

9. Mr. Irshad Aga, the learned counsel appointed under Legal Aid, has submitted that the evidence of P.W.1 Salim Shaikh and the evidence of P.W.8 P.I. Corte is discrepant in respect of the seizure of the alleged counterfeit currency notes. According to the learned counsel for accused No.1, the panch witnesses had arrived at the scene after the accused had been arrested. According to him the evidence of P.W.1 Salim Shaikh clearly reveals that the Police had, in fact, effected the seizure of the currency notes before the arrival of the panchas. Even if the said submission is accepted, according to me, the evidence of P.W.8

Francis clearly establishes the seizure of 14 fake currency notes of Rs.100/- each from the possession of the accused No.1. In view of the large quantity of fake/counterfeit currency notes which were seized from the search of accused No.1, also cannot be said that the accused may have been in legitimate/bonafide possession of the said currency notes not knowing that the said notes are counterfeit. The accused No.1 has also not offered any explanation in respect of his possession of the 14 counterfeit currency notes. Such a large number of currency notes, on examination, by a naked eye, reveals them to be counterfeit. Without any plausible explanation for the possession of 14 Notes, according to me, proves the offence against the accused No.1 beyond reasonable doubt. In view of the large quantity of counterfeit notes in possession of the accused, a benefit that the accused without knowing that the notes are counterfeit could have legitimately come in possession thereof, also cannot be extended to the accused No.1. Therefore, according to me the conviction of accused No.1 needs no interference.

10. The evidence in respect of accused No.2 comprises of the evidence of P.W.2 Abdul Khan in respect of seizure of 12 currency notes and in respect of disclosure statement (Exh.29) and the evidence of Bharat in respect of seizure of three notes of Rs.100/-

each at the time of his arrest as per Exh.46 and the evidence of P.W.7 Devendra to whom the accused is alleged to have given 50 fake notes of Rs.100/- each.

11. P.W.2 Abdul Khan states that after making the disclosure statement the accused, police and the panch witness proceeded in a jeep to Neura. According to him there was a carpentry shed and the accused removed the key of the said shed which was kept above the door of a wooden beam. He further states that the accused removed the currency notes (from above wooden articles that were lying there). In the cross-examination he states that the house had a ground floor plus first floor and the money was found beneath the articles. The room which was opened by the accused is on the first floor. According to him the owner of the said room and the furniture were present there. The owner came there and told the police that accused No.2 was working with him. According to him the said owner was near the said room when the panchanama was being drawn. In the further cross-examination he has stated that the notes were found in a room on the ground floor. According to him the said room was just latched, but was not locked and which was opened by accused No.2. P.W.8 P.I. Corte has stated that the 12 currency notes were seized from the room on the ground floor. The accused had opened the lock, by taking the key which

was kept on top of a pole. The evidence in respect of the seizure of the 12 currency notes of Rs.100/- each which is alleged to be counterfeit is not at all established by the prosecution. P.W.2 Abdul Khan initially states that the room was locked and then he states that the room from where the currency notes came to be seized was on the first floor. He somersaults from this position by stating that the room from where the currency notes were seized was on the ground floor. He completely gives a go-bye to the fact that the room was locked. He then states that the room was only latched. Admittedly the owner of the house was present and the owner of the house had stated that the furniture and the house belonged to him. No evidence has been led by the prosecution to show in what manner the accused had access to the said room which even otherwise, could not be said to be in exclusive possession. Others, besides the accused also had access to the said room. Therefore the inference cannot be drawn that it was the accused who had kept the 12 counterfeit currency notes in the said room. Even otherwise in view of the discrepant evidence, I consider it highly unsafe to accept the evidence regarding the seizure of 12 counterfeit currency notes of Rs.100/- each.

12. The prosecution has also examined P.W.7

Devendra. The evidence of this witness makes an interesting reading. P.W.7 Devendra states that the accused No.2 who was doing carpentry work, had been entrusted with the job of polishing the door of the house of P.W.7 Devendra. According to him he knows the accused since last two and half years. According to him the accused had borrowed an amount of Rs.5000/- from him with a promise to repay the said amount. After about 15 days accused No.2 had returned the money. Accused No.2 had come to his house at about 8 p.m. and at that time P.W.7 Devendra was asleep. The accused had given Rs.5000/- in a plastic bag. The amount comprised of currency notes of Rs.100/- each. P.W.7 Devendra took the amount and kept it without counting it. Next day morning he received the news that accused No.2 had been arrested. He went on a tour with his friends to Belgaum and returned after about 15 days. On his return he opened the packet given by accused No.2 and found that the notes were fake and therefore took the currency notes to the Vasco Police Station which were attached by P.W.8 Francis in the presence of P.W.6 Gurudas Kerkar vide Exh.48. In the cross-examination he states that he was working as a pharmacist in the New Goa Medical Stores at Bicholim and his salary was Rs.2500/-. He had borrowed an amount of Rs.3000/- from his brother for giving it to accused No.2. He had very suddenly left the house on

hearing of the arrest of the accused on the 2nd day of Ganesh Chaturthi. He had not informed his brother that the accused had refunded the amount which he had borrowed. He had learnt about the arrest of the accused at 9 a.m. when he was in the pharmacy and he admits to have returned home and seen the notes and realised that the notes were fake. He says after finishing the puja on the first day of Ganesh, he went to Belgaum and stayed with his friends at Belgaum for seven to eight days. He had not applied for leave nor had he informed the Pharmacy that he was not coming for work. He states that he resumed his duties after the amount was attached by the Police. After his return from Belgaum he was residing with his sister at Sanquelim and was told that the Police had come in search of him at his house. He states that out of confusion and on being afraid of his brother he had not disclosed about this fact.

13. The evidence of this witness apart from being artificial, tasks human credulity for its acceptance. It is unbelievable that when the accused had returned money borrowed by the accused, P.W.7 Devendra would not count it. For some inexplicable reason he chose to flee Goa on learning about the arrest of the accused knowing that the accused had given him fake currency notes. His entire conduct in remaining in Belgaum and

thereafter at the residence of his sister either without obtaining leave or without prior permission from his employer, is a conduct which is extremely suspicious. It not only reflects upon the veracity of his statement regarding the refund of the amount, but also affects the veracity of his statement that he had advanced Rs.5000/- as loan to the accused No.2. Therefore, according to me, the seizure of 50 fake currency notes of Rs.100/- each from the possession of P.W.7 Devendra does not in any manner implicate the accused No.2.

14. On the information of accused No.1 the accused No.2 came to be arrested and during his search three currency notes of Rs.100/- each came to be seized from the pocket of his T-Shirt vide Exh.46. As per Exh.46 the three notes had different numbers as against the evidence that the 14 notes seized from the possession of accused No.1 some had identical numbers. The T-Shirt admittedly has not been attached by the Police. P.W.8 speaks about seizure of the three currency notes from the pocket of T-Shirt of accused No.2. When this circumstance was put to the accused in his statement under Section 313, the accused has denied the seizure and has stated that his T-Shirt did not have a pocket.

15. Mr. Sardessai, appearing on behalf of the

accused No.2/Appellant in Criminal Appeal No.5/2003 has submitted that the seizure of the T-Shirt was extremely vital from the point of view of the prosecution in establishing the factum of seizure of the fake currency notes from the possession of the accused No.2. According to the learned counsel, in the absence of the seizure of T-Shirt, the seizure of the three currency notes is not proved and the accused No.2 is entitled to benefit of doubt.

16. Apart from the question of seizure of the T-Shirt, according to me, the accused no.2 is alleged to have been in possession of three currency notes of Rs.100/- each. The accused No.2 is stated to be a carpenter. Suspicious large quantity of counterfeit notes have not been seized in the possession of the accused. There is no evidence that the accused had either used or attempted to use as genuine the counterfeit currency notes in his possession. The accused is only alleged to be in possession of counterfeit currency notes. Looking to the fact that only three currency notes were seized from the possession of the accused, according to me the accused cannot be attributed with any knowledge that the currency notes in his possession were either fake or counterfeit. There is no evidence that the accused was intending to use the same as genuine. Therefore

according to me the accused no.2 is entitled to be given the benefit of doubt as only three currency notes have been allegedly seized from his possession. Though specifically such a defence is not set up by the accused under Section 313, still the Court can examine the prosecution evidence and in the light of the fact that only three currency notes were found in the possession of accused no.2 and in the absence of any other evidence to show that the accused No.2 was in possession of a large quantity of currency notes or he had tried to use the currency notes in his possession as genuine, the accused is entitled to be given the benefit of doubt on the ground of being in legitimate possession of the currency notes not knowing the currency notes to be either fake or counterfeit.

17. In view of this Criminal Appeal No.5/2003 is allowed. The conviction and sentence passed against the appellant/accused are hereby quashed and set aside and the appellant/accused is acquitted of the offences for which he was charged and convicted. The fine, if paid, shall be refunded to the appellant. Bail Bond stands cancelled.

18. The original accused No.1 is said to be in custody since 31.8.2000. The learned counsel for the accused No.1 states that despite an order of release of

the accused on bail by this Court, the appellant/accused remained in custody because of his inability to furnish the requisite bail bond. Therefore according to me a sentence of three years which the appellant/accused has undergone would meet the ends of justice.

19. Accordingly Criminal Appeal No.7/2003 is partly allowed. The conviction of the appellant for the offences punishable under Sections 489-B and 489-C is hereby confirmed and the sentence of three years and seven years R.I. is altered to the period of imprisonment already undergone. The sentence of fine remains unaltered. The accused to be released forthwith if not wanted in any other case.

P. V. HARDAS, J.

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